

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case Nos.: <b>10-O-02761 (11-O-13595)</b>
	)	
<b>LESLIE CLARKE ROUNTREE II,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 51477,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

Respondent Leslie Clarke Rountree II (respondent) was charged with (1) failing to perform with competence; (2) failing to refund unearned fees; (3) sharing legal fees with a non-lawyer; (4) commingling personal funds in a client trust account; (5) failing to maintain client funds in a trust account; and (6) engaging in an act of moral turpitude. Although respondent had notice of the trial date, he failed to appear at the trial, and his default was entered. Thereafter, the Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to appear at trial and if the attorney fails to have the default set aside or

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<sup>1</sup> Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that all of the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in California on January 5, 1972, and has been a member of the State Bar since then.

#### **Procedural Requirements Have Been Satisfied**

On December 7, 2011, the State Bar filed and properly served a notice of disciplinary charges (NDC) on respondent by certified mail, return receipt requested at his then membership records address, and by regular mail at 1265 West Shaw, Suite 100, Fresno CA 93711.<sup>3</sup>

Respondent filed a response to the NDC on January 10, 2012.

Respondent participated in a status conference by telephone on September 24, 2012, at which a pretrial conference was set for November 5, 2012, and the trial was set for November 27, 2012. On November 5, 2012, respondent appeared at the scheduled status conference at which the court continued the trial date to November 28, 2012, at 10:00 a.m. On November 6, 2012, a minute order setting forth the November 28, 2012 trial date, as well as the time of trial,

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

<sup>3</sup> Respondent's membership records address was changed as of December 8, 2011, to 1265 West Shaw, Suite 100, Fresno CA 93711.

was filed and properly served on respondent via first-class mail, postage prepaid, at the address set forth in respondent's January 9, 2012 response to the NDC.<sup>4</sup> (Rule 5.81(A).)

On the morning of November 28, 2012, the State Bar appeared for trial, but respondent did not. The court entered respondent's default in an order filed on November 28, 2012. The order was properly served on respondent by certified mail, return receipt requested, at his membership records address. (Rule 5.81(B).)<sup>5</sup> The order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The return receipt for the November 28, 2012 certified mailing was received on December 3, 2012, by the State Bar Court, bearing a signature of someone other than respondent.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On March 11, 2013, the State Bar properly filed and served respondent with the petition for disbarment.<sup>6</sup> As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since his default was entered; (2) there is one additional investigation matter pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's

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<sup>4</sup> The address set forth in respondent's January 9, 2012 response is also his membership records address.

<sup>5</sup> A courtesy copy of the order entering default was also served on respondent by first-class mail at his previous membership records address, 7600 N. Ingram Ave., Ste. 104, Fresno, CA 93711.

<sup>6</sup> The petition for disbarment was served on respondent by certified mail, return receipt requested at his membership records address.

conduct as alleged in the NDC. Respondent did not respond to the petition for disbarment or move to set aside or vacate his default. The case was submitted for decision on April 15, 2013.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged, and therefore violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **1. Case Number 10-O-02761 (The Dominguez Matter)**

Count One (A) – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to provide any service of value to his clients and by failing to supervise his employees, who provided deficient services to his clients.

Count One (B) – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$1,500 unearned attorney fee that had been advanced to him by his clients.

Count One (C) – respondent willfully violated rule 1-320(A) of the Rules of Professional Conduct (sharing legal fees with a non-lawyer) by dividing the legal fees he received from clients between March 2009 and September 2009, for loan modification services, with two of his non-attorney contract employees.

Count One (D) – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling personal funds in client funds in trust account) by maintaining his personal funds in his client trust account and using those funds to pay one of his employees money that he owed her for work she had performed on his loan modification cases.

## **2. Case Number 11-O-13595 (The Sine Matter)**

Count Two (A) – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by depositing into his trust account a \$4,800 settlement check he had received on his client’s behalf and then allowing the balance in his client trust account to drop to \$30.27, before paying the client’s chiropractor the \$1,800 of the \$4,800 settlement, as agreed pursuant to a lien he had signed with the chiropractor on behalf of the client.

Count Two (B) – respondent willfully violated Business and Professions Code section 6106 (commission of an act of moral turpitude, dishonest or corruption) by dishonestly or with gross negligence misappropriating for his own use and benefit settlement funds owed to his client’s chiropractor in the amount of, at least, \$1,769.73.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent’s disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and adequate notice of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Leslie Clarke Rountree II be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that respondent be ordered to make restitution to the following payees:

(1) David and Maria Dominguez in the amount of \$1,500 plus 10 percent interest per year from April 1, 2010.

### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Leslie Clarke Rountree II, State Bar Number 51477, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: August \_\_\_\_\_, 2013

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PAT E. McELROY  
Judge of the State Bar Court